THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2141 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved by the order dated 09.05.2005 passed in O.P. No.971 of 2002 on the file of the Chairman, Motor Accident Claims Tribunal-cum-VI Additional District Judge (Fast Track Court), East Godavari at Rajahmundry (for short, 'the Tribunal'), wherein the Tribunal granted Rs.50,000/- as compensation in favour of respondent Nos.1 to 3 herein-claimants against the appellant and respondent Nos.4 and 5 herein, who are the insurer, driver and owner of the offending vehicle respectively, for the death of M.Sanyasamma in a motor accident occurred on 23.03.2002. The deceased-M.Sanyasamma was the mother of the claimants.

2. Heard the learned Standing Counsel for the appellant-insurer of the offending vehicle, apart from perusing the material on record. In spite of service of notice, there is no representation on behalf of respondent Nos.1 to 3 herein-claimants. None appeared for respondent Nos.4 and 5 herein-driver and owner of the offending vehicle. As the appeal relates to the year 2005, it can be disposed of basing on the material available.

3. Learned Standing Counsel for the appellant-insurer would contend that the deceased-M.Sanyasamma was gratuitous passenger in the offending lorry bearing registration No.AP 5U 5919, which is a goods vehicle; the Tribunal erroneously directed the appellant-insurer to satisfy the decree and then recover the amount from the owner of the offending vehicle, which is untenable; and ultimately, prayed to set aside the impugned order.

4. There is no dispute with regard to the death of deceased-M.Sanyasamma in a motor accident occurred on 23.03.2002 due to the rash and negligent driving of the driver of the offending lorry bearing registration No.AP 5U

5919. The Tribunal basing on the evidence on record, assessed total compensation of Rs.50,000/- and granted the same with interest at 6% per annum from the date of petition till realisation in favour of the claimants against the driver and owner of the offending lorry and while dismissing the claim against the appellant-insurer, directed the appellant-insurer to initially pay the compensation and recover the same from the owner of the offending lorry.

5. To substantiate the claim, the claimants, who are the sons of the deceased-M.Sanyasamma, examined P.Ws.1 to 3 and got marked Ex.A.1-attested copy of F.I.R., Ex.A.2-attested copy of the post-mortem examination certificate, Ex.A.3-attested copy of inquest report, Ex.A.4-attested copy of M.V.Inspector's report, Ex.A.5-attested copy of charge sheet and Ex.A.6-photocopy of ration card. To rebut the contentions of the claimants, the appellant-insurer examined its employee as R.W.1 and got marked Ex.B.1-copy of insurance policy. The specific contention of the appellant-insurer is that the deceased travelled in the crime lorry as a gratuitous passenger. The evidence of R.W.1 reveals that the crime lorry was insured with their Insurance Company under the category of goods carriage vehicle. P.W.2 is the direct witness to the occurrence of the accident. She deposed in her evidence that she herself along with the deceased and her co-sister boarded the crime vehicle by paying an amount of Rs.10/- each to the driver of the crime vehicle.

6. It is apt to refer the decision of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**[1], where the deceased was travelling in a goods vehicle, the Hon'ble Supreme Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants. In the instant case, as per the evidence on record, the deceased was a gratuitous passenger in the offending lorry bearing registration No.AP 5U 5919. As the deceased was travelled in a goods carriage vehicle as a gratuitous

[1] 2003(2) SCC 223

passenger, the appellant-insurer cannot be made liable to pay compensation the claimants. Under these circumstances, the direction given by the Tribunal to the appellant-insurer to initially pay the compensation granted in favour of the claimants and later recover the same from the owner of the offending vehicle is erroneous. Therefore, the impugned order is liable to be set aside against the appellant-insurer.

7. In the result, this appeal is allowed and the impugned order dated 09.05.2005 passed by the Tribunal in O.P. No.971 of 2002 is set aside against the appellant-insurer, including the direction to pay and recover. The other terms of the impugned order remained unaltered.

8. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 03.07.2018
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